

**CALIFORNIA COASTAL COMMISSION**

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**W6a**

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## APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

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**Appeal number** ..... **A-3-MCO-05-033**

**Applicants** ..... Dr. Michael and Patricia Moeller

**Appellant** ..... Mary J. Whitney

**Local government** ..... Monterey County (PLN 040050)

**Local decision** ..... Board of Supervisors Resolution 05-082. Approved with conditions April 19, 2005; received May 9, 2005.

**Project location** ..... At and adjacent to 194 San Remo Road, Carmel (APN 243-181-006 and 243-181-005) Monterey County.

**Project description** ..... Construction of a new two-story 3,588 square foot single-family dwelling with a 1,164 square foot attached garage, grading (approximately 185 cy cut, 195 cy fill); tree removal (9 Monterey pines, including 2 landmark pines, 6 coast live oaks, and 3 clusters of coast live oaks); development on slopes of 30% or more; and a lot line adjustment between a 0.85 acre lot (Parcel 1) and a 0.61 acre lot (Parcel 2) resulting in no net change in acreage for either parcel.

**File documents** ..... Monterey County Certified Local Coastal Program (LCP): Carmel Area Land Use Plan and Monterey County Coastal Implementation Plan (including Regulations for Development in the Carmel Planning Area); Local permit PLN040050 Final Local Action Notice and file material.

**Staff recommendation** ... No Substantial Issue

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**Summary:** The Monterey County Board of Supervisors approved a combined coastal development permit (PLN040050), allowing Dr. Michael and Patricia Moeller to construct a two-story, 3,588 square foot single family residence with a 1,164 square foot attached garage, 12-foot wide circular driveway, septic system and grading of approximately 185 cubic yards of cut and 195 cubic yards of fill. Construction of the proposed single family dwelling also involves tree removal (9 Monterey pines including 2 landmark pines, 6 coast live oaks, and 3 clusters of smaller coast live oaks), development on slopes of 30% or greater, and an equal lot line adjustment between two existing parcels resulting in no



net change in acreage for either parcel. The purpose of the lot line adjustment is to reduce development constraints on the second parcel. At this time, development is only proposed on one of the parcels (Parcel 1). The properties are located at and adjacent to 194 San Remo Road (APNs 243-181-006 and 243-181-005) in the Carmel Highlands Area of Monterey County.

The appellant, Ms. Mary J. Whitney, appealed the County's approval to the Commission, on the grounds that the project does not conform to LCP requirements, asserting: 1) that the house design is not consistent with the character of the area; 2) that construction of the house involves development on slopes of 30% or greater; and 3) that the lot line adjustment is not consistent with emergency access requirements identified in the County's Coastal Implementation Plan. The complete appellant's contentions are in Appendix G of this report.

Staff recommends that the Commission find 1) that the house has been sited and designed in keeping with the rural character of the surrounding area; 2) that while construction for the new driveway will require development on a small area of land with slopes of 30% or greater, such development is only proposed on slopes that were manmade from previous driveway grading, the remaining areas with natural slopes of 30% or more are protected by scenic easement, and siting the development in the proposed location better serves to protect coastal resources and as such is permissible under the LCP; and 3) that proposed lot line adjustment would not create conditions that would be inconsistent with emergency access requirements of the LCP. Thus, staff recommends that no substantial issues are raised by the appellant's contentions.

## Staff Report Contents

I. Appeal of Monterey County Decision.....	3
A. Local Government Action .....	3
B. Appeal Procedures .....	4
C. Appellant's Contentions .....	4
II. Recommended Motion and Resolution .....	5
III. Recommended Findings.....	6
A. Project Location .....	6
B. Project Description .....	6
C. Analysis of Project Consistency with LCP Requirements.....	7
1. Community Character .....	7
2. Development on Steep Slopes .....	11
3. Emergency Access .....	13

### Exhibits

Exhibit A	Regional Location Map
Exhibit B	Project Vicinity Map
Exhibit C	Assessor's Parcel Map



Exhibit D	Proposed Lot Line Adjustment and Site Plan
Exhibit E	Slope Map
Exhibit F	Board of Supervisors Final Local Action Notice approving Moeller project (Board of Supervisors Resolution 05-082)
Exhibit G	Appeal of County's Final Action by Ms. Mary J. Whitney
Exhibit H	Emergency Access Road to 194 San Remo Road
Exhibit I	Public Viewshed Map
Exhibit J	Parcel Maps of Surrounding Area Showing House Size of Various Neighboring Parcels
Exhibit K	Applicant's Photos of Neighboring Homes
Exhibit L	Examples of Exterior Materials for Proposed Development
Exhibit M	Overlay of Proposed Development on Slope Map
Exhibit N	Carmel Highlands Fire Department Correspondence Regarding Emergency Access
Exhibit O	Existing Easements for Alternative Emergency Access Routes

## I. Appeal of Monterey County Decision

### A. Local Government Action

On April 19, 2005, the Monterey County Board of Supervisors approved a combined coastal development permit (PLN040050), allowing Dr. Michael and Patricia Moeller to construct a two-story 3,588 square foot single family residence with a 1,164 square foot attached garage, 12-foot wide circular driveway, septic system and grading of approximately 185 cubic yards of cut and 195 cubic yards of fill. Construction of the proposed single family dwelling also involves tree removal (9 Monterey pines including 2 landmark pines, 6 coast live oaks, and 3 clusters of smaller coast live oaks), development on slopes of 30% or greater, and an equal lot line adjustment between two existing parcels resulting in no net change in acreage for either parcel. As is described below, the purpose of the lot line adjustment is to reduce development constraints on the second parcel. The properties are located at and adjacent to 194 San Remo Road (APN 243-181-006, hereafter referred to as Parcel 1 and APN 243-181-005, hereafter referred to as Parcel 2) in the Carmel Highlands Area of Monterey County. At this time, development is only proposed on one of the parcels (Parcel 1).

The project was previously approved by the County's Minor Subdivision Committee November 18, 2004. However, five neighborhood residents appealed the Minor Subdivision Committee approval to the Monterey County Board of Supervisors, on December 20, 2004. At the Board's first *de novo* hearing, February 15, 2005, the Board of Supervisors recommended that the item be continued to allow the applicants and appellants time to try and resolve some of the matters raised by the appeal. As a result of continued project discussions, the applicants and the five original appellants prepared and signed a good-faith agreement on some contentions, which was submitted to the Supervisors at their next hearing, April 19, 2005.



Ms. Mary J. Whitney, who is one of the original five appellants, subsequently appealed the Board's approval of the project to the Coastal Commission on May 23, 2005.

## B. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it involves a lot line adjustment, which is not designated as the principal permitted use under the existing zoning district.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is not located between the first public road and the sea and thus, this additional finding would not need to be made in a *de novo* review of this case.

The only persons qualified to testify before the Commission on this substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the *de novo* stage of an appeal.

## C. Appellant's Contentions

The appellant, Ms. Mary J. Whitney, appealed the County's approval to the Commission on the grounds that the project does not conform to LCP requirements regarding maintaining community character, preventing development on steep slopes, and providing adequate emergency access to all parcels. In particular, the appellant contends that:

- 1) The size, mass, design and siting of the proposed single family dwelling are not consistent with Coastal Implementation Plan (CIP) Section 20.146.030.C.1, which requires that "new structures



be subordinate to and blend into the environment, using appropriate materials that create that effect;”

- 2) Construction of the house involves development on slopes of 30% or greater, inconsistent with CIP Section 20.146.120; and
- 3) The lot line adjustment would create a second parcel without emergency access, inconsistent with CIP Section 18.56.060 for emergency access requirements.

Please see Exhibit G for the appellant’s complete appeal document.

Please note that while the appeal alleges inconsistencies with specific County policies, additional relevant policies may be included where they help to clarify LCP requirements. Policies cited herein have been cited using the broadest possible construction of the appellant’s contentions so as to be as policy-inclusive as possible while not overly burdening the analysis with unnecessary detail. The complete Monterey County LCP is available for review at the Commission’s Central Coast District office and is a substantive file document for these findings. In any case, all appeal contentions are addressed in full in these findings.

## II. Recommended Motion and Resolution

### MOTION:

*I move that the Commission determine that Appeal No. A-3-MCO-05-033 raises **NO substantial issue** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

### STAFF RECOMMENDATION:

*Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.*

### RESOLUTION TO FIND SUBSTANTIAL ISSUE:

*The Commission finds that Appeal No. A-3-MCO-05-033 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*



### III. Recommended Findings

#### A. Project Location

The project includes two parcels (APN 243-181-006, hereafter referred to as Parcel 1 and APN 243-181-005, hereafter referred to as Parcel 2) located at and adjacent to 194 San Remo Road, in the Carmel Highlands area of Monterey County (see Exhibits A and B). These properties (see Exhibit C), along with a third adjacent parcel that is not part of this application, are owned by Dr. Michael and Patricia Moeller. Legal documents show that these three lots were acquired at various times by previous owners as separate existing lots; thus they are considered to be separate legal lots of record.

New development in Carmel Highlands is governed by the *Carmel Area Land Use Plan* segment of Monterey County's certified Local Coastal Program (LCP) and the LCP's Coastal Implementation Plan (including Regulations for Development in the Carmel Planning Area). The area is zoned LDR/1(CZ), which requires a minimum of one acre of land per residence. Although the two parcels in question are less than one acre in size (Parcel 1 is 0.85 acres and Parcel 2 is 0.61 acres), they are both legal non-conforming lots of record having been created prior to zoning ordinances establishing the minimum size standard. The two parcels are adjacent along their respective northern and southern property boundaries (Parcel 1 being the southerly parcel, and Parcel 2 being the northerly parcel, as shown on Exhibit C).

Under the proposed reconfiguration, the parcels would become adjacent to each other along their respective, new eastern and western property boundaries (with reconfigured Parcel 1 on the west and reconfigured Parcel 2 on the east, as depicted on Exhibit D). The proposed single-family dwelling would be located on Parcel 1 (194 San Remo Road). Under the current configuration, Parcel 2 is greatly constrained by existing site topography, which slopes steeply toward a drainage at its north boundary (see Exhibit E).

As shown on Exhibit H, these parcels, and at least three other neighboring ones, are accessed by a road between Mentone Drive and San Remo Road.

#### B. Project Description

The proposed project includes the construction, on reconfigured Parcel 1, of a two-story, 3,588-square foot single family dwelling, with a 1,164 square foot attached garage, 12-foot wide circular driveway, septic system, and grading of approximately 185 cubic yards of cut and 195 cubic yards of fill. Construction of the proposed single family dwelling also involves tree removal (nine Monterey pines including two landmark pines, six coast live oaks, and three clusters of smaller coast live oaks) and some development on slopes of 30% or greater. The project also involves a lot line adjustment between the two existing parcels, resulting in no net change in acreage for either parcel. As is described below, the purpose of the lot line adjustment is to reduce development constraints on Parcel 2. At this time, development is only proposed on Parcel 1. However, the applicants have shown where potential future building, driveway, and septic envelopes on Parcel 2 might be located outside of areas constrained by slopes over 30%.



Under the proposed reconfiguration, access to Parcel 1 would be available from a driveway off of the existing access road between Mentone Drive and San Remo Road. As conditioned by Monterey County, access to the reconfigured Parcel 2 would be assured by requiring that the applicants either provide documentation that it has all necessary easements and/or deed restricting Parcel 1 to allow for access across it to reach Parcel 2. The applicants have indicated that they are agreeable to recording a deed restriction on Parcel 1 to allow for such access to Parcel 2.

## C. Analysis of Project Consistency with LCP Requirements

### 1. Community Character

#### Appellant's Contentions

The appellant contends that the proposed project does not conform to LCP policies regarding protecting visual resources and community character. She asserts that the size, mass, design and siting of the proposed single family dwelling are not consistent with Coastal Implementation Plan (CIP) Section 20.146.030.C.1, which requires that new structures be subordinate to and blend into the environment, using appropriate materials that create that effect.

#### Cited and Other Applicable LCP Policies

The Coastal Implementation Plan is an essential element of the Monterey County Local Coastal Program, and includes, among other provisions, General Development Standards for specific zoning and land use plan designations.

With regards to protecting community character, the appellant cited the following provision as not being followed in the County approval:

*CIP Section 20.146.030.C.1 – General Development Standards - Structures shall be subordinate to and blended into the environment, using appropriate materials that will achieve that effect. If necessary, modification of plans shall be required for siting, structural design, height, shape, color, texture, building materials, access and screening through the Coastal Development Permit process (Ref. Policy 2.2.3.6).*

The following is the *Carmel Area Land Use Plan* policy referred to in the above provision:

*Carmel Area LUP Policy 2.2.3.6 – Structures shall be subordinate to and blended into the environment, using appropriate materials that will achieve that effect. Where necessary, modification of plans shall be required for siting, structural design, color, texture, building materials, access and screening.*

Two other visual resource protection policies that relates to the appellant's contentions are the following:



*Carmel Area LUP Policy 2.2.4.10.e. Existing trees and other native vegetation should be retained to the maximum extent possible both during the construction process and after the development is completed. Landscape screening may be used wherever a moderate extension of native forested and chaparral areas is appropriate. All new landscaping must be compatible with the scenic character of the area and should retain existing shoreline and ocean views.*

*Carmel Area LUP Policy 4.4.2.6: New subdivision and development of undeveloped parcels south of the Carmel River shall be permitted only if the following principal criteria can be fully met in addition to other applicable policies of this plan:*

- a. Structures can be located, designed, or screened to be outside of the public viewshed.*
- b. Narrow roads which can be sited to minimize impact upon the viewshed and require a minimum of grading.*
- c. Roads and structures can be sited to avoid disruption or degradation of riparian corridors and other sensitive plant and wildlife habitats.*
- d. Access roads for new development can be constructed to meet minimum County standards as well as the resource protection standards of this plan.*
- e. Development would be in keeping with the present rural character of the area...*

Exceptions to Policy 4.4.2.6 may be made if full compliance cannot occur for Carmel Highlands, where the subject site is located. These policies are implemented by the similarly worded CIP Sections 20.146.030.C.1.e and 20.146.120.A.1, respectively.

Additionally, two different provisions in the CIP have slightly different criteria governing the removal of landmark trees as follows:

*CIP Section 20.146.060.D.1: Landmark trees of all native species shall not be permitted to be removed. A landmark tree is a tree which is 24 inches or more in diameter when measured at breast height, or a tree which is visually significant, historically significant, exemplary of its species, or more than 1000 years old....*

*An exception may be granted by the decision-making body for removal of a tree that is 24 inches or greater in diameter (measured at breast height) and not also visually or historically significant, exemplary of its species or more than 1000 years old, provided that a finding may be made that no alternatives to development (such as resiting, relocation, or reduction in development area) exists whereby the tree removal can be avoided.*

*CIP Attachment A, Section 2.D.2.c: Landmark trees All landmark trees will be protected from damage if not permitted to be removed as a diseased tree which threatens to spread the disease to nearby healthy trees or as a dangerous tree which presents an immediate danger to human life or structures. A landmark tree is a tree 24 inches or more in diameter when measured at*





*breast height, or a tree which is visually significant, historically significant, exemplary of its' species or more than 1000 years old.*

Finally, CIP Section 20.14.060 contains Site Development Standards for areas zoned LDR/1(CZ) (low density residential, 1 acre per dwelling unit), which include:

- a. Minimum building site shall be 1 acre unless otherwise approved as part of a clustered residential development;
- b. Maximum development density shall not exceed 1 acre per unit;
- c. Main Structure Maximum height is 30 feet;
- d. Minimum Setbacks – Main Structure: 30-foot front yard setback; 20-foot side yard and rear setback;
- e. Maximum building site coverage is 15% (or 6,534 sq. ft.).

#### Analysis of Conformance with Applicable LCP Policies

The appellant's contentions are not supported by the evidence in the County permit file or subsequently obtained by the Commission. The Monterey County Board of Supervisors Final Local Action Notice (or FLAN) approving the project responded to allegations that the proposed development was not consistent with the LUP because of its size, height and proposed exterior materials. Specifically, the County planning staff report to the Board (issue 5, on page 8 of the FLAN) stated that the proposed design:

*...is consistent with the site-development standards of the LDR zoning district, which serve to limit the size of the house. Also the proposed design is not unlike others approved in the vicinity since adoption and certification of the County's Local Coastal Program. In addition, Condition 25 requires the planting of at least 6 Monterey pines to replace those removed that are 12" dbh or greater; and the applicant proposes privacy screening along the westerly property line of Parcel 1 (as adjusted) consisting of several 15-gallon coast live oaks. These facts taken together indicate that the structure will be subordinate and blended into the environment consistent with Policy 2.2.3.6 of the Carmel Land Use Plan.*

The FLAN also includes findings that the site is appropriate for residential development (Finding 1) and is in compliance with the site development standards for Low Density Residential District, in accordance with CIP Section 20.14.060 (Finding 1d). The County also conditioned the project to require unobtrusive lighting (Condition 8), and to require replanting of six Monterey pines to replace those allowed for removal (Condition 25).

The County approved plans show retention of a large number of existing trees. The County findings (finding 3) state that two landmark Monterey pine trees are proposed for removal, however, the findings



state that the project, as conditioned, minimizes tree removal in accordance with LCP requirements, that no alternatives for resiting, relocation or reduction exist whereby removal can be avoided for the landmark trees, and that one of the landmark trees is located in an area that would pose a threat to the structure due to windthrow, and so could not be retained. The Forest Management Plan prepared for the project by Forest City consulting, January 27, 2004, provides evidence in support of these statements, noting that numerous designs were proposed for the property in an attempt to avoid removing any tree over 24 inch, that many of the Monterey pines on the property are in poor health (several trees are standing dead, many have dead branch tips and tops symptomatic of pitch canker), and that the two landmark trees being removed were of the poorest condition and would pose the greatest risk to a residence in the area<sup>1</sup>. Thus the proposed tree removal is consistent with CIP Sections 20.146.060.D.1 and CIP Attachment A., Section 2.D.2.c. The applicants have also agreed to replant the six Monterey pines that are to be removed for the building site, as well as additional coast live oak trees along the property line. Planting of the Monterey pines and coast live oak trees will help maintain and improve the forested character of the site, and help to screen the house from adjacent properties, and is consistent with Carmel Area LUP Policy 2.2.4.10.e.

The project also requires minimum grading for access, since the Moellers have designed their house to take advantage of the existing and natural slopes on site by placing the driveway in an already graded area, and stepping the house up the hillside, which also serves to reduce the apparent size and scale of the house. Building materials and colors shown on the plans are similar to those used elsewhere in the neighborhood.

Since appeal to the Coastal Commission, the applicants have provided the Commission with the following supporting materials:

- a. Legal documentation tracking parcel acquisition and lot legality.
- b. a parcel map with the size of various residences on approximately 27 nearby properties (see Exhibit J), which range in size from 2,000 square feet to nearly 7,500 square feet. The average of these 27 homes 3,508 square feet. The proposed residence will be 3,588 square feet, with 2,459 square feet of building lot coverage.
- c. Photos of residences in Carmel Highlands near the proposed building site (see Exhibit K). Photos show several different architectural styles, including large Tudor and Mediterranean styles, with both stucco and wood siting, tiled and shingled roofing materials.
- d. Examples of the proposed exterior materials (see Exhibit L), including Caramelo colored stucco, grayish-red clay roof tiles, wood windows, and stone color samples (golden sand colored in appearance).

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<sup>1</sup> The January 27, 2004 Forest Management Report also notes that the coast live oaks on the property were in poor health as well. At least four coast live oaks had died and two had severely declined between the initial site inspection of April 23, 2003 and a subsequent inspection on May 28, 2003. While the sudden mortality and bleeding cankers found on the trees were thought to be symptomatic of Sudden Oak Death, tests of tree material was conducted and results indicated that Sudden Oak Death was not present, and root fungus was the cause of the sudden tree mortality.



A staff site visit of the Moeller property, and surrounding area, on Wednesday, June 29<sup>th</sup>, confirmed the variety of architectural styles in the neighborhood and that the proposed house would fit in. The residential neighborhood around the Moeller's property includes houses that range in size and style, including small wooden cabins with steep pitched roofs and wooden shingling, to broad Mediterranean-style homes similar in color, design and scale to the proposed design. Many houses in the area also include a garage on the lower level of the house (i.e., under a two story house), similar to the proposed design.

Although no development is proposed on Parcel 2 at this time, the lot line adjustment allows for future development to be located on flat building areas of the property, and so avoids the need to build on steep slopes, and minimizes tree removal.

### Conclusion

As approved with conditions by the County the proposed project is consistent with the above-cited policies. The Commission agrees with the County findings that the applicants' design and County conditions ensure that the proposed structures will be subordinate to and blend into the environment, consistent with CIP Section 20.146.120. Appropriate building materials and colors are being used, as also required by this Section. The height, size, and setbacks fall within the maximums allowed in the zoning district (CIP Section 20.14.060). The development is in keeping with the character of the neighborhood as required by LUP policy 4.4.2.6.e. Most existing trees are being protected, replacement trees are to be planted, and additional vegetation screening is to be planted, consistent with LUP policy 2.2.4.10.e. Thus, the Commission finds that the Board of Supervisor's approval of the project does not raise a substantial issue with regards to scenic resource protection policies (e.g., Carmel Area LUP visual resource policy 2.2.3.6, and Carmel Area Coastal Implementation Plan Regulations 20.146.030.C.1) because the County has approved and conditioned the project consistent with applicable policies and regulations of the certified LCP.

## 2. Development on Steep Slopes

### Appellant's Contentions

The appellant contends that the project proposes development on slopes of 30% or more, inconsistent with CIP Section 20.146.120 of the Regulations for Development in the Carmel Area.

### Cited and Other Applicable LCP Policies

CIP Section 20.146.120 includes Land Use Development Standards for the Carmel Area. Relevant portions of CIP Section 20.146.120 include the following:



*CIP Section 20.146.120.A.6: As a condition of development approval, all areas of a parcel in slopes of 30% and greater shall be required to be placed in a scenic easement.*

*CIP Section 20.146.020.A.2: All development and use of land, whether public or private, must conform to the development standards of this ordinance and must meet the same resource protection standards set forth in this ordinance. Where conflicts occur between one or more provisions of the plan, such conflicts shall be resolved in a manner which on the whole is the most protective of significant coastal resources (Ref. Policy 4.4.2.7).*

Additionally, Carmel Area LUP Policy 2.2.4.10.a requires that ...

*...buildings located on slopes shall be sited on existing level areas and sufficiently set back from the frontal face. Buildings should not be located on slopes exceeding 30 percent, except when all other plan guides are met and siting on slopes over 30 percent better achieves siting consistent with the policies of the plan.*

The exception is implemented by CIP Section 20.146.030.C.1.a that allows development on slopes of 30% or more if 1) there is no alternative which would allow development to occur on slopes of less than 30%; **or**, 2) the proposed development better achieves the resource protection objectives and policies of the Carmel Area Land Use Plan and development standards of this ordinance.

### Analysis of Conformance with Applicable LCP Policies

While the appellant is correct in noting that some development will occur on slopes of 30% or greater, her contention that this is inconsistent with the County LCP is not supported by the evidence in the County permit file or subsequently obtained by the Commission. The Monterey County Board of Supervisors Final Local Action Notice (or FLAN) approving the project included findings (Finding 2) indicating that while the project does propose to locate a small amount of development (approximately 720 square feet of Parcel 1 as reconfigured) on slopes of 30% or greater, the proposed project would better achieve the goals, policies and objectives of the LCP because it minimizes tree removal and avoids development on steeper areas of the parcel (as reconfigured). Finding 2 also notes that remaining areas of both parcels with slopes of 30% or greater shall be conveyed to the County as a Scenic and Conservation easement pursuant to CIP Section 20.146.120.A.6. Condition 9 does require a scenic easement for slopes of 30% or greater, “except for the small area expressly approved for development by this action.”

Since appeal to the Coastal Commission, the applicants have also provided the Commission with a slope map of a large portion of the site, showing slopes over 30% on Parcel 1, as reconfigured, and part of Parcel 2 (see Exhibit E). The applicants have indicated that the small area of slope over 30% that they propose to install the driveway on is from previous grading for driveway access.

As described above, Commission staff have viewed the site, including areas of slopes over 30% that will be put in scenic easement and the small area of previous grading now proposed for development



(previous driveway bank, and proposed driveway and garage). While the site is considerably overgrown by grasses, poison oak and shrubs, staff was able to observe slopes of 30% or more on the north side of the property and driveway cuts from previous grading that in part are over 30% slope. There is clear evidence on site that previous cuts made by grading for the earlier unimproved driveway remain but are not deep (creating a bank with 3 to 5 foot maximum height) or extensive (over an area approximately 5 feet wide and 40 feet long) where the new driveway is proposed.

An overlay of the proposed development on the slope map (see Exhibit M) shows that the new driveway for the proposed development on Parcel 1 will cross a small area of slopes of 30% or more from the previous grading, but otherwise, the proposed development stays out of larger areas of natural, well-vegetated slopes over 30%. No matter how and where the house and driveway are sited, it appears almost impossible to avoid crossing the narrow, over-30% slope created by the previous grading. Assuming the applicants' slope portrayal is accurate, there is one ten foot wide gap in this steep cut area, but installing a driveway through there would not meet fire protection standards, would still likely require some grading of the steeper slope area, and would not result in a more resource protective project.

Furthermore, without the proposed lot line adjustment, much of the existing Parcel 2 consists of slopes of 30% or greater. While there is potentially suitable area on the existing Parcel 2 for a small building and septic envelope, any complete development, including grading for an access roadway, could not avoid slopes of 30% or greater. Any development on Parcel 2 would almost certainly have a much larger impact on resources under the present lot configuration than would occur with proposed lot line adjustment.

### Conclusion

The Commission concurs with County findings that, while the residential project does lie on a small area of slopes of 30% or more, the impact is insignificant and is not precluded by the cited LCP policies. The proposed lot line adjustment would allow the proposed residence, as well as any potential future development on Parcel 2, to be sited in areas that that would better achieve the goals, policies and objectives of the LCP, and thus better protect coastal resources, because the proposed lot line adjustment minimizes potential future tree removal and would serve to better avoid development on steeper areas of the parcel. The County's action also protects a large contiguous forested area with slopes of 30% or greater through scenic easement, consistent with CIP Section 20.146.120.A.6. As these steep slopes are part of a larger forested corridor, the proposed development and lot line adjustment will likely serve to protect wildlife habitat that may be provided by this area. Thus, the Commission finds that the appellant's contentions do not raise a substantial issue with respect to Carmel Area LUP policies and corresponding implementation regulations regarding development on steep slopes.

### 3. Emergency Access



### Appellant's Contentions

With regards to ensuring that the lot line adjustment provides for adequate emergency access, the appellant contends that development of Parcel 1 as proposed and the lot line adjustment between said Parcel 1 and Parcel 2 as proposed:

- a. Constitutes a violation of Section 18.56.060 of the building and construction standards contained in Title 18 of Monterey County Ordinances for Wildfire Protection Standards and the State Responsibility areas
- b. Creates a land locked parcel
- c. Approves the siting of a development in a manner that may compromise future access to the currently undeveloped parcel owned by the applicants (Parcel 2)
- d. Gives rise to the potential for variance claims in connection with potential development of the adjusted Parcel 2, and
- e. Is based on false representations to the Board of Supervisors by planning staff. [While the appellant does not indicate specifically what false representations were made, an example is given referring to findings made in the April 19<sup>th</sup> staff report to the Board, that "the fire district has made no indication that the project would result in inadequate access for emergency vehicles for *either parcel*," with emphasis added by the appellant.]

### Applicable Policies

CIP Section 18.56.060 deals with Emergency Access. Subsections relevant to the appellant's contentions include the following:

*CIP Section 18.56.060.1 Road and street networks, whether public or private, unless exempted under this chapter, shall provide for safe access for emergency wildland fire equipment and civilian evacuation concurrently, and shall provide unobstructed traffic circulation during wildfire emergencies.*

*CIP Section 18.56.060.2 Access roads shall be required for every building when any portion of the exterior wall of the first story is located more than 150 feet from fire department access.*

*CIP Section 18.56.060.3: All roads shall be constructed to provide a minimum of two nine-foot traffic lanes providing two-way traffic flow unless other standards are provided in this article...*

*CIP Section 18.56.060: The grade for all roads, streets, ... private lanes and driveways shall not exceed 15 percent.*

*CIP Section 18.56.060.10: All one-way roads shall be constructed to provide a minimum of one 12-foot traffic lane...[and] shall connect to a two-lane roadway at both ends...*

*CIP Section 18.56.060.12 Driveways shall not be less than 12 feet wide unobstructed*



### Analysis of Conformance with Applicable LCP Policies

The appellant's contentions are not supported by the evidence in the County permit file or subsequently obtained by the Commission. The Monterey County Board of Supervisors Final Local Action Notice (or FLAN) approving the project included findings dealing with emergency access in response to earlier contentions of the original appeal to Board of Supervisors. County Finding 16, the "Summary of Appellant's contentions and Staff Responses," notes that the appellants had disagreed with findings made as part of the Minor Subdivision Committee approval, and contended that "the project may result in a landlocked parcel without adequate access for emergency vehicles (Issue 5 on pg 10 of the FLAN). In response the County notes that the project was reviewed by the Carmel Highlands Fire Protection District as part of the County's interdepartmental review process, and that four conditions recommended by the Fire District were incorporated into the project approval (conditions 21, 22, 23, & 24). County staff also noted, "...the fire district made no indication that the project would result in inadequate access for emergency vehicles for either parcel." County staff further stated that they had determined that access to Parcel 2 was feasible, and clarified that review of the project did not and does not approve a specific proposal to develop Parcel 2, and that any future development on the parcel would be subject to additional permits and review, including requirements for emergency access.

Conditions 21-24 of the County approval include standard Fire District requirements for development, and among other things, require that: (a) driveways be 12 foot wide; (b) the grade for driveways not exceed 15 percent; (c) all buildings be issued address numbers; (d) flammable vegetation within 30 feet of the house be removed to provide fire safety – environmentally sensitive areas may require alternative fire protection; and (e) buildings be installed with automatic fire sprinklers. The site plan for residential development on Parcel 1 includes a 12-foot wide driveway, with a grade of less than 15%, connecting to the access roadway between San Remo Road and Mentone Drive, which is suitable for emergency fire access as discussed below.

Additionally, Condition 16 requires that prior to filing the record of survey, the applicants provide documentation to the Director of Planning and Building Inspection Department and Director of Public Works for review and approval that the newly configured Parcel 2 has adequate access including necessary easements and/or deed restrictions on Parcel 1.

Since appeal to the Coastal Commission, the applicants have submitted documentation describing how emergency access to the reconfigured Parcel 2 could be installed. The applicants have provided the Commission with letters from the Carmel Highlands Fire Department Chief Cindy Nagai (dated February 14, March 3, and March 31, 2005; see Exhibit N) previously submitted to the Board of Supervisors. The Fire District's February 14th letter indicates (1) that the property owners for this area executed a grant deed dated February 8, 1991 providing a "non-exclusive easement for emergency access purposes only", that allows the Fire District an emergency access roadway between #7 Mentone Drive and San Remo Road; (2) that the said easement provides for emergency response to 194 and 195 San Remo Road; (3) that the dedicated Emergency access roadway was essential for development of these lots, because fire engines would not have been able to get to them without it; and (4) that fire engines can drive down roadways that are more than 15% grade, but cannot drive up more than 15% grade. The Fire District's March 3rd letter clarified that when responding to an emergency, fire engines



would drive up to Mentone Drive, and then go down the emergency roadway to the Moeller property. The engines would then stop and operate from the Emergency access road in front of the Moeller property. Other emergency vehicles (e.g., ambulance) will still be able to get to the home by use of the required 12-foot wide driveway. The letter further indicated that area residents would be able to drive down the access road prior to arrival of the emergency vehicles, without interfering with fire department operations. The Fire District's March 31<sup>st</sup> letter confirmed that 1) the Fire district's review was for development of a single family dwelling on Parcel 1, as currently proposed; 2) the Fire district's review does not approve any possible future development or access issues related to possible future development of a single family dwelling [on Parcel 2]; and 3) all future projects would still be subjected to the same code compliance review for emergency access. Both the March letters included a map showing the emergency access easement between Mentone Drive and San Remo Road (see Exhibit N).

The applicants have shown how they will be able to comply with the County condition by placing an easement over reconfigured Parcel 1 to allow access from the roadway between Mentone Drive and San Remo Road to reconfigured Parcel 2. Such access would meet Fire Department requirements, without significantly impacting coastal resources, provided it is designed to minimize tree removal on site. It appears also to be possible to access reconfigured Parcel 2 directly off of the aforementioned roadway. Noted documents and parcel maps also show an easement off of San Remo Road that could be extended to provide emergency access to reconfigured Parcel 2 through its northerly boundary (as shown in Exhibit O). However, this potential access is problematic in that it would involve crossing steep vegetated slopes and a riparian corridor. This accessway would be precluded by the required scenic easement over this portion of the property. However, given the other potential accessways from the San Remo to Mentone roadway, the northern access is unnecessary. Thus, while future development on Parcel 2 will require additional review once a project is proposed, the Commission agrees with the County's finding that "the fire district has made no indication that the project would result in inadequate access for emergency vehicles for either parcel."

Furthermore, the proposed lot line adjustment is at least neutral with regard to emergency access and appears positive from a resource protection/ LCP compliance perspective. Under the existing lot configurations emergency access to Parcel 2 could be developed along the existing northern easement, which as described above is problematic. Another alternative is to go through Parcel 1, which would require an easement through Parcel 1. Absent this lot line adjustment and its conditional requirements, a subsequent owner of Parcel 1 as configured could preclude access through his or her parcel, necessitating the problematic northern access route to Parcel 2. The lot line adjustment with Condition #16 helps ensure that there will be appropriate emergency access to reconfigured Parcel 2. An alignment for access across Parcel 1 better serves resource protection policies, as compared with providing access from the northern easement because it would require significantly less grading, development across steep slopes, and tree removal.

## Conclusion





The Commission finds that contrary to the appellant's contentions, the proposed project as approved and conditioned by the Board of Supervisors, is consistent with the Emergency Access requirements of CIP Section 18.56.060 because adequate emergency access exists or can be provided to both lots as proposed. Thus, the County's approval would not create a land-locked parcel, would not compromise future access to the undeveloped parcel, would not require variance claims in order to develop the site, and is not based on false representations. Thus, the Commission finds that the appellant's contentions do not raise a substantial issue with regard to the LCP's emergency access requirements.

